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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/05/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,182

Applicant(s)

FELL ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,18-22,24-39 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) 5,11,13-16,18,21,22,24-31,39 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-10,12,19,20,32-38,49,50 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10-27-03, 2-12-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 18.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the species of Figures 18-19 with detachable primary bonds and Group II in Paper Nos. 9 and 20, respectively, is acknowledged.

2. Claims 5, 11, 13-16, 18, 21-22, 24-31, 39 and 51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9 or 20.

Claim 11 was withdrawn in addition to the claims listed by Applicant since such structure is not shown by the elected species. With regard to the generic claims, predicated on the definition of "connected" or "bonding" as being indirect or direct connections or bondings, the Examiner agrees that claims 1, 3, 6-9, 32 and 34 are generic. If such interpretation is not given to such language such claims would not be generic because the claims would not read on the species of Figure 15 and 16 or the species of 15 and 17 since the absorbent element in these species are only indirectly connected or bonded to the garment side surface of the chassis. The Examiner also considers claim 37 generic as the claim does not require that there be no crotch portion other than the absorbent element which spaces the panels, i.e. the panel have terminal end edges and the absorbent element only spans a space between terminal edges of the panels. Also, claim 49 is considered generic if such is interpreted to refer to the primary bonds, see page 15, lines 1-5 and the paragraph bridging pages 18-19 of the instant specification as well as further discussion *infra*.

3. The election requirement set forth in Paper 8 and the restriction requirement set forth in Paper NO. 19 are deemed proper and made FINAL.

Specification

Drawings

4. The drawings were received on 10-27-03(pages 1-8) and 2-12-04 (page 3). The drawing changes shown therein are approved by the Examiner except for the remaining informalities discussed infra. The approval of the replacement sheets is held in abeyance until such remaining informalities have been overcome.

5. The drawings are objected to because Figure 1 would be in better form if 90 and 70 were shown adjacent edge 66, see Figure 2. In Figure 3, 86 should denote the surface of 54 facing sheet 80, see page 19, lines 22-26 and page 7, lines 3-14. In Figure 8, the lines from 52 and 54 should be solid. In Figures 16, 17, 19 and 20 there should be no dashed lines. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

6. The disclosure is objected to because of the following informalities: on page 10, line 10, after "54" should --or layer-- be inserted? On page 15, amendment to line 13, line 4 thereof appears to be missing a word or words. On page 19, line 24, "inner" should be --outer--, see page 7, lines 3-14. Claim 49 now claims the absorbent element being "fixedly, detachably

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connected to the garment side surface of the chassis". While it is noted that the paragraph bridging pages 14-15 and the paragraph bridging pages 18-19 disclose the primary bonds fixedly detachably connecting the absorbent element to the chassis, claim 49 does not claim that the primary bonds provide this fixed, detachable connection. Is the connection claimed in claim 49 and that of the primary bonds described on pages 14-15 and 18-19 one and the same? If not where is such connection set forth?

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 49 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As already discussed supra it is unclear how many connections and of what type are being required at a minimum, i.e. is the connection claimed in this claim and the connection at the first location, i.e. the primary bond connection as described in the specification, one and the same?

Claim Language Interpretation

8. Directional terms are defined as set forth on page 7, lines 3-14. The terms "outer cover", "back sheet" and "barrier" are considered to be usable interchangeably, see page 8, lines 1-3 and page 9, lines 1-3. "Extensible" is defined as set forth on page 22, lines 1-3. The terms "location", "fixedly", "fixedly detachable" and "fixedly detachably connected" are defined as set

forth on pages 14, 15 and 19. As already discussed, the terminology "connected" and "bonding" is interpreted as including indirect or direct connections. It is also noted that the "wherein" clause of claim 1 does not require detachment due to expansion only occurring when there is expansion of the absorbent material. Also such clause does not require detachment due to detachment of the connection. Claim 37, as set forth above, does not require that there be no crotch portion other than the absorbent element which spaces the panels. Due to the lack of clarity discussed above, the connection at the first location and the fixedly, detachable connection in claim 49 will be considered one and the same.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3-4, 6-10, 19-20, 32-34, 36-38, 49-50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Milby, Jr. et al '303.

Claims 1 and 19-20: see Claim Language Interpretation section supra, Figures, col. 1, lines 6-10, and 58-67, col. 2, lines 5-8 and 19-31, page 2, lines 53-col. 3, line 6, col. 6, lines 11-17, 40-42 and 66-67, i.e. the chassis is the panty or undergarment or sheet 24, the absorbent element is 20 wherein the connection at the first location to the garment side surface of the chassis is indirect or is 28 and 110 wherein the connection at the first location to the garment side surface of the chassis or sheet 24 is direct, the first location is 30 or adjacent 54, 56, or both 54

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and 56, the cover sheet is at least the innermost layer of 26, the second location is 115, and the first and second portions are the outer surfaces of the portions of the pleats 110 of the cover sheet 26 which are connected, see again discussion of the terminology “connected” or “bonding” supra which does not require direct connection or bonding of the outer surfaces . With regard to the preamble and “wherein” clause of claim 1, in addition to the portions of Milby already cited, see also col. 7, lines 6-15.

Claim 3: see portions of Milby cited supra, i.e. the primary bond is 30 or adjacent 54, 56 or both 54 and 56, see Claim Language Interpretation section supra, and the secondary bond is 115. The secondary bond dissolves or detaches during use but the primary bond does not, i.e. the primary bond is stronger than the secondary bond during use.

Claim 4: see element 24 or see col. 4, line 4, col. 3, line 65 and col. 4, lines 6-7, i.e. tissue wrap of combination pulp/tissue wrap absorbent core.

Claims 6-7 and 9: see Figures, adjacent 56 or element 30 and col. 6, line 63- col. 7, line 3. It is noted the region defined by 115 has a length and width.

Claim 8: when the chassis is considered 24, then the first location is adjacent 56 on both sides and the second location is 115, see col. 6, line 63-col. 7, line 3 and Figures.

Claim 10: see col. 6, lines 18-19 or adjacent 54.

Claim 49: element 30 when the chassis is the panty or undergarment.

Claim 50: see col. 5, lines 9-13, i.e. the outer cover is the outermost layer of a composite backsheet.

Claims 32-34, 36, 38 and 52: see discussion of claims 1, 3-4, 6-10, 49 and 50 supra. Additionally the primary bond region is the extent of element 30 or where 24 connects to 26, i.e. adjacent 54, 56 or both 54 and 56, and the secondary bond region is the extent of 115.

Claim 37: see Claim Language Interpretation section supra, col. 6, lines 25-26, and thus Figures 3-4, elements 240, 242, 244 and col. 3, lines 33-51 of '697, i.e. the panty has spaced apart panels and the absorbent element 20 is connected to each, at least indirectly, via the crotch portion with the primary bond 30. It is noted that the claim language does not require direct bonding or no crotch portion except for the absorbent element.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Milby, Jr. et al '303 in view of Roeder '371.

When the chassis is considered the panty or undergarment and the primary bond is considered 30, the Milby patent shows the second location 110 as comprising a pair of laterally spaced secondary locations in Figures 2-3 but only one longitudinally extending first location whereas Applicant claims a pair of laterally spaced parallel first locations. However, see col. 6, lines 11-13 of Milby and Figures 1, 2 and 4 of Roeder. To make the one first location of Milby

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at least a pair of laterally spaced parallel first locations instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Roeder.

13. Claims 12 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milby, Jr. et al in vie of Osborn, III et al, '269.

Applicants claim the absorbent material comprising folds. See col. 4, line 4 and col. 6, lines 44-46 of Milby. Also note title, element 46 in Figure 6 and col. 29, line 47-col. 30, line 3 of Osborn '269, i.e. "acquisition layer" as known includes absorbent material and folded sheets. To employ an acquisition layer of folded absorbent material on the Milby device, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that it is known an "acquisition layer" includes such structure as taught by Osborn. In so doing, the absorbent material would include folds as claimed.

Response to Arguments

14. Applicant's remarks of 2-12-04 and 10-27-03, and thus 4-28-03 with regard to the Milby reference, have been considered. The remarks of 2-12-04 and 10-27-03 except those with regard to the prior art are either deemed moot in that the issue has not been reraised or are deemed not persuasive for the reasons set forth supra. With regard to the 4-28-03 remarks with regard to Milby, such remarks have been considered but are deemed narrower than the claim language and the teachings of Milby as set forth supra.

Conclusion


15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted The EP '110 already of record, Litchholt EP '314 and Ahr "724 all teach devices with primary and second bonds of varying strengths. The Schaar '273 reference shows an expandable baby panty.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
April 29, 2004